



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150411

PRELIMINARY RECITALS

Pursuant to a petition filed July 02, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 05, 2013, at Racine, Wisconsin.

NOTE: The record was held open until August 9, 2013, to give the parties an opportunity to supplement the record. Racine County Department of Human Services submitted a 59 page fax, later in the day on August 5, 2013, that included case comments, budget printouts and notices sent to Petitioner since April 2013. Petitioner did not submit any additional documentation by the designated deadline.

The issues for determination are:

1. Whether Petitioner's appeal of benefits she received in 2012 is timely;
2. Whether the Racine County Department of Human Services correctly terminated Petitioner's FoodShare benefits effective July 1, 2013; and
3. Whether the agency correctly determined Petitioner's FoodShare benefits for July 2013, August 2013 and September 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kathy Christman, Lead Financial Employment Planner
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On December 13, 2012, the agency sent Petitioner a notice indicating that her FoodShare benefits would be ending effective January 1, 2013. The notice was sent to [REDACTED] which Petitioner indicated was and is the correct address to her residence. (Exhibit 6)
3. For unknown reasons, the agency re-opened Petitioner's FoodShare case on January 7, 2013 and issued the maximum allotment of \$526.00 per month. (Exhibit 2; Exhibit 3, pgs. 2-3)
4. On January 31, 2013, Petitioner contacted the agency and reported being homeless. Petitioner updated the agency with a mailing address. (Exhibit 7, pg. 2)
5. On April 22, 2013, the agency sent Petitioner a reminder that she needed to complete her six month report form within 30 days if she wanted to continue to receive benefits. This letter was sent to [REDACTED] which Petitioner verified became her mailing address and is her father's residence. (Exhibit 7, pg. 54)
6. On May 20, 2013, the agency sent Petitioner a copy of a six-month report form with instructions. This was sent to the [REDACTED] address. (Exhibit 7, pgs. 42-53)
7. On June 18, 2013, the agency sent Petitioner a notice indicating that her FoodShare benefits would be closing effective July 1, 2013, because she did not complete her six month report form. This notice was sent to the [REDACTED] address. (Exhibit 7, pgs. 38-41)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 2, 2013. (Exhibit 1)
9. On July 3, 2012, the agency sent Petitioner another notice indicating that she was not receiving FoodShare benefits because she did not complete her six month report form. (Exhibit 7, pgs. 33-37)
10. Petitioner submitted her Six Month Report Form on or about July 12, 2013. (Exhibit 7, pg. 3)
11. On July 15, 2013, the agency sent Petitioner a notice indicating that her FoodShare benefits re-opened and that for July 2013, she would be receiving \$373.00 and as of August 2013, she would be receiving \$443.00 per month. (Exhibit 7, pgs. 27-32)
12. On July 15, 2013, the agency sent Petitioner a Notice of Proof Needed requesting verification of her rent. (Exhibit 7, pgs. 23-26)
13. On July 25, 2013, the agency sent Petitioner a notice indicating that as of September 1, 2013, her FoodShare benefits would be increased from \$373.00 per month to \$526.00 per month because her W-2 benefits ended and so, she would begin receiving Transitional FoodShare benefits. (Exhibit 7, pgs. 17-22)

DISCUSSION*Benefits Issued/Actions Taken Prior to April 3, 2013*

At the hearing, Petitioner indicated that she disagreed with the FoodShare allotments that she had been receiving since July 2012. However, A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely.

An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction of benefits or the termination of an ongoing case. Because Petitioner did not file her appeal until July 2, 2013, any appeal of an action that occurred before April 3, 2013 is untimely. Consequently, I have no jurisdiction to address Petitioner's concerns about the FoodShare benefits she received in 2012.

Termination of Petitioner's Benefits effective July 1, 2013

"Food units certified for 12 months, and subject to reduced change reporting requirements, are required to submit a six-month report form (SMRF) in the sixth month of the certification period. Using the SMRF, these food units are required to report and **verify** the current gross earned and unearned income received by all household members. Self-employment income that has already been averaged does not need to be re-verified, unless a significant change is reported." (Emphasis added) *Wisconsin FoodShare Manual* §6.1.2 If the food unit does not complete the SMRF, "FoodShare will close effective the last day of the process month at adverse action." *Id.*

The agency sent to Petitioner, at the correct address, a notice dated April 22, 2013, indicating that she needed to complete a SMRF within 30 days. The agency sent Petitioner a SMRF form with instructions and clearly indicated on the front page of the instructions that the form needed to be returned to the agency by June 5, 2013, if she wanted to continue receiving FoodShare benefits. (See Exhibit 7, pg. 42) Petitioner did not submit her SMRF by the designated deadline. As such, the agency correctly terminated Petitioner's FoodShare benefits, effective July 1, 2013.

July Benefits

It is undisputed that Petitioner's household consists of three people, Petitioner and her two children. The maximum allotment allowed for a three person household is \$526 per month. *Wisconsin FoodShare Manual* §8.1.2

After Petitioner submitted her SMRF on or about July 12, 2013, the agency determined that her income for July would qualify a person for a full benefit of \$526. (See Exhibit 7, pg. 6) However, because Petitioner submitted her SMRF late, the agency pro-rated her benefits and issued \$373 to her. *Id.* This is consistent with *Wisconsin FoodShare Manual* §6.1.2, which states, "If FS closes for lack of SMRF, verification, or other reasons and the household takes the required action within the calendar month following the report month, the agency shall reopen FS and issue prorated benefits from the date the household took the required action." Thus, the agency's actions were correct.

August and September Benefits

For August and September 2013, the agency determined that Petitioner is eligible for the maximum benefit of \$526 per month. (See Exhibit 7, pgs. 7, 8 and 23-32) Consequently, there is no appealable issue.

CONCLUSIONS OF LAW

1. Petitioner's appeal of her 2012 FoodShare benefits is untimely.
2. The agency correctly terminated Petitioner's FoodShare benefits effective July 1, 2013.
3. The agency correctly determined Petitioner's FoodShare allotments for July 2013, August 2013 and September 2013.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

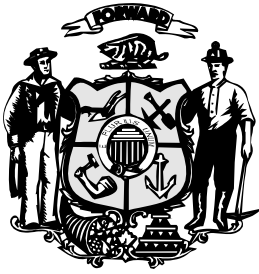
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of August, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 13, 2013.

Racine County Department of Human Services
Division of Health Care Access and Accountability